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UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

HEATHER LEYVA, an individual,)	
)	FIRST AMENDED COMPLAINT
Plaintiff,)	
)	
vs.)	Civil No. 2:18-cv-121
)	
BLAINE ROBBINS, a Utah Highway)	
Patrol Trooper,)	
)	Judge Robert J. Shelby
Defendant.)	
)	

Plaintiff HEATHER LEYVA, through counsel, alleges and complains for causes of action against Defendant as follows:

PRELIMINARY STATEMENT

This is a civil rights action in which Plaintiff seeks relief for the Defendant's violations of her rights guaranteed by the United States Constitution, specifically the Fourth and Fourteenth Amendments, which rights are further secured by the Civil Rights Act of 1871, 42 U.S.C. § 1983 and § 1988. Plaintiff seeks damages, both compensatory

and punitive; affirmative and equitable relief; an award of attorney fees, costs, and interest; and other and further relief as this Court deems just and equitable. This is further an action at law to redress a deprivation under color of statute, ordinance, regulation, custom, or usage of a right, privilege, and immunity secured to Plaintiff by the Fourth and Fourteenth Amendments of the Constitution of the United States, and arises under the law and statutes of the State of Utah.

JURISDICTION AND VENUE

1. This action arises under the United States Constitution and federal law, particularly under the provisions of the Fourteenth and Fourth Amendments of the Constitution of the United States, and 42 U.S.C. §§ 1983 and 1988.

2. This action seeks redress for violations of the civil rights laws of the United States, and jurisdiction is therefore invoked pursuant to 28 U.S.C. § 1343 and 42 U.S.C. § 1983.

3. The claims made in this Complaint occurred and arose in the State of Utah, in this District, and in the Central Division. Venue is therefore proper under 28 U.S.C. § 1391 and 28 U.S.C. § 1331.

4. Plaintiff is seeking damages under federal law pursuant to the claims for relief specified below, in amounts to be proved at trial.

5. This Court has authority to award costs and attorney fees pursuant to 42 U.S.C. § 1988.

6. This Court also has jurisdiction over any pendent State claims Plaintiff may wish to bring, or has brought, pursuant to 28 U.S.C. § 1367.

PARTIES

7. **Plaintiff Heather Leyva** (“Ms. Leyva”) is an employee of West Coast Towing, a privately held company, and is a resident of Utah County, State of Utah.

8. **Defendant Sergeant Blaine Robbins** (“Robbins”), at all times relevant herein, was a UHP trooper who was acting within the course and scope of his employment, and under color of law.

STATEMENT OF FACTS

9. Ms. Leyva functions as primary liaison between numerous law enforcement agencies and West Coast Towing, her employer.

10. In her capacity as liaison, Ms. Leyva was required to deal with Defendant Robbins regarding some serious issues that West Coast Towing was having with the UHP’s “Heavy Duty Rotation” (“HDR”), whereby UHP was contractually obligated to assign lucrative heavy duty towing jobs fairly, without favoritism, to the three companies that qualified under the Rotation, in order that no one company receive preferential treatment. *See*, Contract between the State and West Coast Towing regarding heavy duty towing.

11. The assignment of heavy duty towing jobs was allegedly not being performed fairly, to the detriment of West Coast Towing, and to Ms. Leyva personally, and it was Ms. Leyva's job to resolve this issue.

12. The HDR was overseen by Defendant, Sergeant Blaine Robbins of the Utah Highway Patrol, during October 2016 - June 2017.

13. Over time, it became clear to Ms. Leyva that Robbins was not just interested in resolving the HDR issues; he was interested in Ms. Leyva *personally*.

14. During the relevant period, for a period of months, Ms. Leyva received numerous, very suggestive text messages from Robbins. *See* Exhibit I, sampling of text messages.

15. Robbins' suggestive text messages put Ms. Leyva in a difficult position, since upsetting Robbins could jeopardize her company's access to heavy duty towing jobs, and as a result, would reduce her bonus income and possibly result in loss of her job.

16. Ms. Leyva was a single mother.

17. Ms. Leyva had absolutely no romantic interest in Robbins.

18. Robbins was married.

19. Through texts, Robbins tried numerous times to come to Ms. Leyva's house, saying things like "Do you need a drink? I'll bring one over," and then "I really didn't want a drink, you know... that was just code for wanting to see you."

20. Robbins also claimed “I just heard on the radio that there is a disturbance at your residence. What’s the address? I’ll be right over.” This was a ploy. There was never a “disturbance call” to Ms. Leyva’s residence.

21. Ms. Leyva strictly disclaims any intentionally flirtatious behavior toward Robbins. She politely attempted to deflect Robbins’ unwanted suggestive text messages, but she also had to avoid upsetting Robbins since he controlled her company’s access to lucrative heavy duty towing jobs. As a result, some of Ms. Leyva’s text message responses reflected an attempt to humor Robbins so as not make him angry.

22. In his text messages, Robbins would often refer to Ms. Leyva as “baby” or “sweet pea.”

23. Robbins even pulled Ms. Leyva over, complete with flashing lights, while she was driving an unmarked vehicle that was not hers nor her employer’s. Robbins was using his official UHP patrol vehicle, and his position as a UHP trooper, to stalk Ms. Leyva.

24. The purpose for the traffic stop was just so Robbins could “see” Ms. Leyva and engage in petty, flirtatious conduct on the side of the road.

25. Robbins’ conduct was not only unwanted, but frightening and deeply troubling to Ms. Leyva.

26. On June 15, 2017, Robbins called Ms. Leyva to follow up with a text she had sent claiming, essentially, that her company’s access to heavy duty towing jobs

was not being apportioned fairly. Robbins told her “Now, *do not* give me a reason not to like you.” Ms. Leyva felt very threatened by this, knowing that Robbins controlled her company’s access to the lucrative heavy duty towing jobs.

27. In early May, Ms. Leyva had finally informed her boss, Rob Face, of the sexual harassment she was encountering from Robbins.

28. Shortly thereafter, Mr. Face contacted Todd Royce, a UHP trooper in the Salt Lake Division.

29. Mr. Face contacted Trooper Royce because he was someone Mr. Face had worked with in the past, and someone Mr. Face respected. Mr. Face also wanted to speak with someone who was not in the same UHP section as Robbins, since Mr. Face considered the trustworthiness of Robbins’ section suspect.

30. Mr. Face related to Trooper Royce Ms. Leyva’s complaints of sexual harassment by Robbins. Royce told Mr. Face to contact Robbins’ superior, UHP Lieutenant Corey Nye.

31. Mr. Face then called Lt. Nye. Nye yelled at Mr. Face, claiming that Mr. Face was “lying” about Robbins’ sexual harassment of Plaintiff.

32. Nye was extremely hostile and threatening toward Mr. Face.

33. Nye told Mr. Face that if he opened an internal affairs investigation, Mr. Face and Ms. Leyva would have to “take a lie detector test.”

34. During the period from roughly January 2017 - June 2017, Robbins repeatedly sexually harassed Ms. Leyva with improper, sexually suggestive comments, text messages, telephone calls, stalking, and other unwanted personal contact, which caused Ms. Leyva to be frightened and intimidated.

35. After Plaintiff made Robbins' misconduct known publicly in July 2017, Robbins immediately left the HDT position as coordinator, and was reassigned to another position with UHP.

FIRST CAUSE OF ACTION

~ Sexual Harassment As Violating Ms. Leyva's Rights Under the Equal Protection Clause of the Fourteenth Amendment ~

Against Sgt. Blaine Robbins in His Individual Capacity

Cognizable Under 42 U.S.C. § 1983

36. Plaintiff incorporates all allegations as set forth above.

37. Sgt. Robbins used his position as the operational overseer of the "Heavy Duty Rotation" contract for the Utah Highway Patrol to commit various acts of sexual harassment against Plaintiff Heather Leyva, as exemplified by the conduct described above.

38. The Fourteenth Amendment Equal Protection Clause forbids public employees from sexually harassing private citizens.

39. In the Tenth Circuit, it is clearly established that an employee of a private company, like Ms. Leyva, may assert a § 1983 sexual harassment claim under the equal protection clause of the Fourteenth Amendment against government employees, like UHP Sgt. Robbins. The Court has held:

...in allowing a nonemployee to assert a § 1983 sexual harassment claim against a public official, *Whitney*¹ applies established principles regarding the liability of public officials for abusing governmental authority.

Johnson v. Martin, 195 F.3d 1208, 1218 (10th Cir. 1999) (footnote added).

40. The *Whitney* Court further made clear:

This court has recognized that “§ 1983 suit[s] against state officers in their individual capacities [are] not barred by the Eleventh Amendment...”

Whitney v. State of N.M., 113 F.3d 1170, 1173 (10th Cir. 1997) (bracketed text in original).

41. Additionally, The *Whitney* Court stated:

Applying the standards set out in *West*², as elucidated by the Ninth Circuit in *Vang Dang*³, this court resolves that Whitney’s allegations of sexual harassment by Patrick are sufficient to state a [Fourteenth Amendment] claim upon which relief could be granted. Read liberally, Whitney’s complaint alleges that Patrick harassed her at a time that Patrick had some ***state-derived authority over her ability to get a license.***

Id. at 1174 (bracketed text added for clarity, emphasis and footnotes added).

¹ *Whitney v. State of New Mexico*, 113 F.3d 1170 (10th Cir.1997).

² *West v. Atkins*, 487 U.S. 42 (1988).

³ *Dang Vang v. Vang Xiong X. Toyed*, 944 F.2d 476 (9th Cir.1991).

42. The *Johnson* Court also referred to *West* when it stated:

The [Supreme] Court observed that “[i]t is firmly established that a defendant acts under color of law when *he abuses the position given to him by the State.*” *Id.* at. 49–50 (emphasis added). That general statement about public officials’ abuse of their authority was itself based on well-established authority.

Johnson, 195 F.3d at 1218 (italics in original, bracketed text added).

43. In *Johnson*, the Tenth Circuit concluded as follows:

We therefore conclude that, during the period of time that Mr. Martin allegedly engaged in the acts of sexual harassment, a public official’s reasonable application of the prevailing law would lead him to conclude that to abuse any one of a number of kinds of authority for [the] purpose of one’s own sexual gratification (including the abuse of the authority granted a municipal building inspector) would violate the Equal Protection Clause.

Id.

44. Robbins’ conduct abused the position and power given to him by the State of Utah by sexually harassing Plaintiff Heather Leyva for his own sexual gratification.

45. Robbins’ conduct violated Ms. Leyva’s Fourteenth Amendment rights to equal protection of the laws.

46. Ms. Leyva was damaged *inter alia* in that she was extremely frightened and worried by Robbins’ conduct, and suffered extreme emotional distress as a result.

47. Robbins intentionally did nothing to correct the problem with the HDR misconduct. He did not correct the problem because he knew that if he did, Ms. Leyva would have no reason to keep in contact with him.

48. Robbins is therefore liable for the relief requested herein.

49. Robbins is further liable for costs and attorney fees, as codified in 42 U.S.C. § 1988.

50. Robbins' conduct was either intentional and/or reckless, justifying punitive damages to Ms. Leyva as a result of the conduct set forth herein.

SECOND CAUSE OF ACTION

~ Illegal Seizure In Violation of the Fourth Amendment ~

Against Sgt. Blaine Robbins in His Individual Capacity

Cognizable Under 42 U.S.C. § 1983

51. Plaintiff incorporates all allegations as set forth above.

52. As detailed in Fact Nos. 23-25 above, Defendant Robbins, without probable cause or reasonable suspicion, executed an illegal traffic stop on Plaintiff Leyva, complete with flashing lights. The purpose for the traffic stop was just so Robbins could "see" Ms. Leyva and engage in petty, flirtatious conduct on the side of the road.

53. Robbins' conduct was not only unwanted, but frightening and deeply troubling to Ms. Leyva.

54. The subject traffic stop was illegal and unconstitutional pursuant to clearly established law, as articulated in *Martinez*, for example, which cites to both Supreme Court and Tenth Circuit precedents:

A traffic stop is a seizure within the meaning of the Fourth Amendment. *Whren v. United States*, 517 U.S. 806, 809-10 (1996). ***Without reasonable suspicion or probable cause, a detention during a traffic stop violates the detainee's constitutional rights.*** See *United States v. Mosley*, 743 F.3d 1317, 1330 (10th Cir. 2014).

Martinez v. City of Rio Rancho, 2015 WL 13650056, at *4 (D.N.M. Feb. 12, 2015) (emphasis added).

55. Clearly, with respect to the traffic stop at issue, no traffic violation occurred, and there was no reasonable suspicion or probable cause to justify Robbins activating his emergency lights, conducting a traffic stop upon Ms. Leyva, and detaining her.

56. Robbins is therefore liable for the relief requested herein.

57. Robbins is further liable for costs and attorney fees, as codified in 42 U.S.C. § 1988.

58. Robbins' conduct was either intentional and/or reckless, justifying punitive damages to Ms. Leyva as a result of the conduct set forth herein.

THIRD CAUSE OF ACTION

~ Intentional Infliction of Emotional Distress ~

Against Sgt. Robbins

59. Plaintiff incorporates all allegations as set forth above.

60. As detailed in Fact Nos. 15, 16, 19-27, and 34, Robbins' conduct was intentional, outrageous, and intolerable in a civilized community.

61. Robbins' actions recklessly and thoughtlessly disregarded his position of power over Ms. Leyva.

62. Any reasonable person in the position of Robbins would have known that extreme emotional distress would result from his actions.

63. Robbins' continuing sexually-charged and inappropriate text messages irresponsibly disregarded the likelihood of causing Ms. Leyva emotional distress, in that his overtures were unwanted. But Ms. Leyva could not reject his advances outright for fear of losing HDR referrals and potential bonuses. *See* Fact No. 15.

64. As a result of Robbins' actions, Ms. Leyva suffered severe emotional distress. *See* ¶46 herein.

65. The Utah Supreme Court has clarified the elements necessary to prove Ms. Leyva's claim of intentional infliction of emotional distress:

To prove such a claim, a plaintiff must show (a) that the defendant intentionally engaged in *some conduct toward the plaintiff considered*

outrageous and intolerable in that it offends the generally accepted standards of decency and morality (b) with the purpose of inflicting emotional distress or where *any reasonable person would have known that such would result*, and (c) that *severe emotional distress resulted* as a direct result of the defendant's conduct.

Russell v. Thomson Newspapers, Inc., 842 P.2d 896, 905 (Utah 1992) (emphasis added).

66. Ms. Leyva suffered severe emotional distress as a result of Robbins' conduct. Any reasonable person would have known that such suffering would result. Robbins' conduct was outrageous and intolerable.

67. Robbins' actions, as described herein, meet the necessary elements to prove Ms. Leyva's claim of intentional infliction of emotional distress, and Robbins is therefore liable for, *inter alia*, the severe emotional distress he caused to Ms. Leyva, and all of the damages set forth herein.

FOURTH CAUSE OF ACTION

~ Violation of the Utah Constitution's Equal Protection Clause ~

68. Plaintiff incorporates all allegations as set forth above.

69. Article I, Section 2 of the Utah Constitution states that the people of Utah are entitled to "equal protection and benefit" under government power.

70. The right to equal protection provided under Art. I, Sec. 2 is self executing.

71. Equal protection under the State Constitution is a fundamental right.

72. Robbins' actions, as set forth in the paragraphs above, violated Ms. Leyva's right to "equal protection and benefit" of political power and the law.

73. Robbins' actions constitute a flagrant violation of Ms. Leyva's rights under the Utah Constitution.

74. Existing remedies do not redress Ms. Leyva's injuries as perpetrated by Robbins.

75. There is no equitable relief available to Ms. Leyva, or it would be wholly inadequate under the circumstances, where the conduct and injuries have already occurred.

76. Ms. Leyva is entitled to damages for extreme emotional distress as a result of Defendant's violation of this Constitutional right.

77. Ms. Leyva is entitled to economic damages as set forth herein for Defendant's violation of this Constitutional right.

78. Ms. Leyva is entitled to other damages as set forth herein.

JURY DEMAND

Pursuant to F.R.Civ.P. 38, Plaintiff demands a trial by jury for all issues herein.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff demands judgment against Defendant as follows:

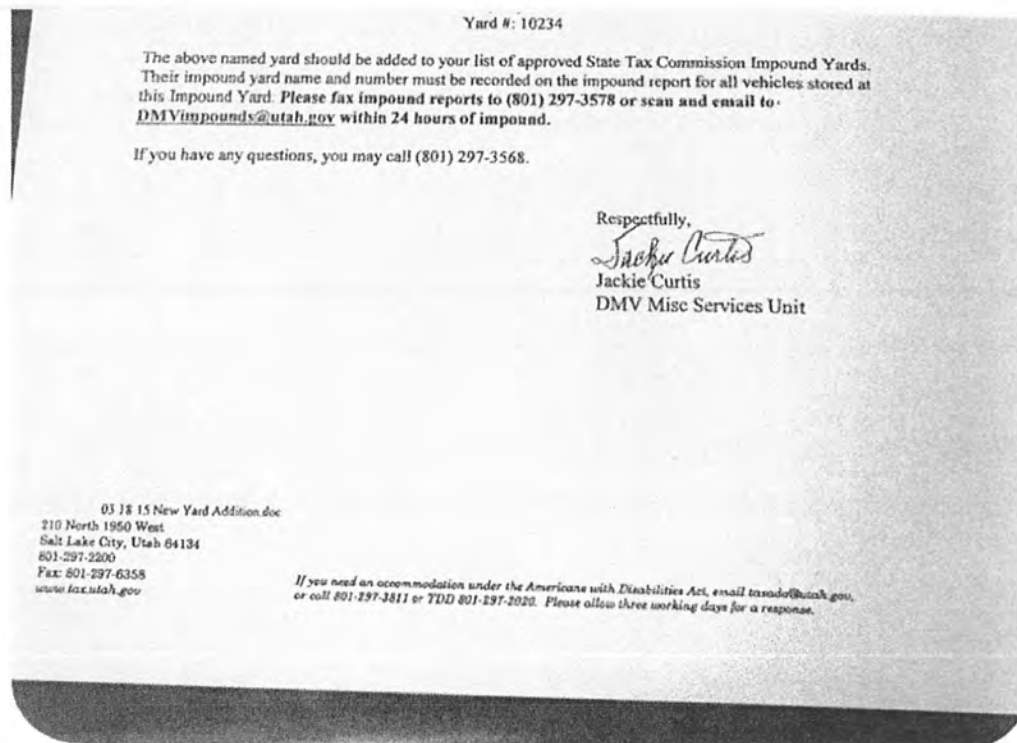
1. For general compensatory damages in an amount to be determined at trial;
2. For special damages as are shown at trial;
3. For punitive damages against Defendant as may be allowed by law;
4. For pre-judgment interest on the damages assessed by the Court, as allowed by law;
5. For Plaintiff's costs and reasonable attorney fees as may be allowed by law; and
6. For such other and further relief as the Court deems just and proper.

DATED this 27th day of June, 2018.

SYKES McALLISTER LAW OFFICES

/s/ Robert B. Sykes
ROBERT B. SYKES
Attorney for Plaintiff

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Area 2

Wed, May 31, 10:41 PM

Ok, so you can stop stressing out. I just called dispatch and you're now on the rotation.

Thank you

By the way I can see your skinny little legs in one of the pictures.

?

The reflection from one of the tool

Home.

Need a drink or something?

I just drank a coconut water.

Awe dang I was hoping....

I really didn't want a drink ya know..

Well that's what u said...

That was code for just wanting to see you and talk a bit.

Fri, May 26, 10:54 AM

What else will u need to get WC towing & transport added? Lmk. Stay safe, I'm sure it will be a busy weekend!!

Wed, May 31, 2:51 PM

I'm getting pressure from both sides



What is Robs last name (incident management Rob)

Tue, May 23, 10:18 PM

I will call him woolsey! lol it's too confusing with 2 different Robs! Hope u had a successful firearms night!

Hey baby!!!!!! Yep just came out of the canyon. I get to keep all my guns for another year...

Lol good job! I had no doubt!

Don't text and drive! It's against the Law! Go home and get some sleep. Glad it went well!

Talk soon sweet pea!!!!



And yes I am..... Because....I didn't get to see you long enough...

Well... how can we remedy that??

I could think of many different ways and positions. Unfortunately we can't tonight. I'm done here at 10 then it's off to bed. I have PT test in the morning at 7 grrrrrr.

Lol. Ok maybe tomorrow. Good luck with the testing!

I guess you could always send me a you best sexiest picture. That might help.....



Ya know.....only if ya wanted.

lol I don't have any of those!!

If u want to meet up on your lunch



Ya know.....only if ya wanted.

lol I don't have any of those!!

If u want to meet up on your lunch
(dinner) tomorrow... let me know!

Ok, your place?????????!!!!!!!

OH, THAT'S A GREAT IDEA!!!

OK, ILL BE THERE.

Lol! Nothing special at my place!

UMMM you're there, right? What
more special than that? Nothing I
say...

Not that special lol

You're very special to me.

Just saying

While just caught the door.

Absolutely, don't you even worry about it.

Can I just say one thing?

You can say anything u want

I could not stop staring at you. I had to force myself to look away so I didn't creep you out.....haha You looked absolutely beautiful...stunning...

Thank you! I have been working really hard!

That is evident. Good job, I am so proud of you.....

I'm glad people can tell lol

Thank u

Thu, May 18, 6:50 PM

You do know that I am less than 4 pounds away from -30!!!!

Where are u at with it??

Yes yes I know..... Still hovering around the 228 area. However this UNDERDOG is about to make a come from behind victory!!!

Lol. Well catch me if u can!!

So are we on for lunch tomorrow then? Didn't hear from you last night

Yes, for sure. I can't wait to see this new 139 pound body. 😊 Wendy's in AF?

Things change daily for me, so I'll keep you posted, but for now it's looking good.

Sounds great

I hung up a bikini in my closet that I have to look at everyday.... I will get into it this summer

That's a great idea, I'll do the same thing. Loan me one of your bikinis to hang up.....hehe

Ok, I'm sure your wife will love that!

Hahaha, ya maybe not..... Again the mind thing, I will invision you in it. SERIOUS MOTIVATION!!!!

Hahah

Send me a picture. I haven't seen you in a while....





I wanta see you minus 21
pounds... 😊



So, where you at with our little competition?

This morning I weighed in at 232.

We will see on Saturday.

I don't weigh in until then

Hehehe ok, sounds good.

I really wish you could come out walking with me. Can you not bring the phone with you?

I can take my phone anywhere, but... I do a lot of other things at work during the day besides answer the phone lol.
I could really use a walking buddy!!
U can't do it in the evening??

Hahaha buddy?? I haven't been called that in a while. Not really,

Yes we do. My problem, with my luck I'll see someone I know and they'll wonder who this hot blond chick is I'm with.

Oh, is that what it's about???

Ok well.... then we don't have to do lunch. Don't want to embarrass you or get u in trouble. That's not my M
O

Trust me I know that's not your MO and You're certainly no embarrassment.

Are ya mad me?

No

Not at all

Oh whew, man I sure hope not....

All good in the hood

286

286? Where ya headed?

Bluffdale I'll be back in 20 minutes

I'll be waiting 285. You in the what car.

White car

Sun, Apr 2, 9:04 PM

Just heard there was a disturbance call at your house. What's the address and I'll come check it out.....😊

Haha. No disturbance. I am beat, going to bed early. Be safe out there we will talk soon.

Ah dang!! Ok, sleep well.

Mon, Apr 3, 9:10 AM

Your welcome, you deserve it
Now lets get a heavy this weekend
so I will get to see you. I need
something nice to look at. The guys
I work with are ugly....😂

Hahaha....I'm sitting here waiting for
it.....

Maybe I'll come north and do a little
speed enforcement in your neck of
the woods....

Sweet! Call me when u get my
heavy!!

You got it

Sat, Apr 1, 11:47 PM

Well.... looks like not while u are on
shift, anyway lol

Well hello there. I thought you went
to bed..

I want to be in love with what I see in the mirror. That will make me happy.so I am GOING to do it!

Awesome babe!!!❤️

So I kinda fell off the wagon a bit today.

Really!?

I am frustrated cuz I haven't fallen off once and have been soooooo diligent and am still the same this week as last.

Guess I should just be thankful that I didn't gain... right!?

Lunch was 2 pieces of pizza and dinner was a calzone....

Exactly!!!!

Oh SNAP

you are gonna have to run an extra

Exactly!!!!

Oh SNAP

you are gonna have to run an extra mile tomorrow!

I really wish I could make you understand just how incredible you look. I know we are our own worse critic women even more than men but lady you really are gorgeous in lot of different way. The first time I actually met you up the canyon I was shocked. Even though we laugh because you had just gotten out of the shower hehehe. Your looks and personality were both beautiful. It made my day. Your a ton of fun to talk to, text with and be around. All that other stuff is superficial. Sorry that got a tad long.

And you're right I will need to run several more miles this week.....🤔

Hahaha love it.

Did ya hear that?

Nope I stepped away from my phone. Whatcha got!?

I said, Salt lake could you get a hold of west coast towing and tell their Secretary she's pretty darn sexy and doesn't need to loose any weight..... 😊

What!?! You did not!!!!

Hehe, just seeing if you were paying attention

You wouldn't do that!!!

Haha maybe not however.....
... I am the Sgt, and I'm always right!!!!

Oh really???

yep....for sure, just ask me...

Ask you what you know, or if you are always right?!?

Whichever.... I KNOW I'm always RIGHT. Especially when it come to that....

Hehehe

Trust me on this one.

Lol. Well I appreciate that but, I know it needs to happen!

If it makes you feel better about you, then do it.

Trust me I know how guys think. (weird I know) and you are a 10.



thank u

That's not what it is... it means
Laughing My Ass Off

OH.....haha haha..... Maybe idiot
works better for me...

Lol

Well...You wouldn't do that either
It would be the BEST thing that has
ever happened to you.....😬

Wait!!!!!! What are we talking about
again!?!? The laughing or the
running!?

Or whatever else we weren't talking
about lol

Haha haha use you imagination.. J/k

I'm just being stupid. Erase and
start over....

Its fun to day dream...